IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16391 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
JAYESHKUMAR NAVALRAM NIMAVAT - Respondent(s)

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Appearance :
GOVERNMENT PLEADER for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 1st February 2003 passed by the Labour Court, Junagadh, in Reference (LCJ) No.12 of 1995 whereby the petitioner was directed to reinstate the respondent with continuity of service along with 75% back wages.

2. The short facts of the case are that the respondent was working as watchman with the petitioner Department from 22.8.1991 in the fixed salary of Rs.450/- per month. According to the respondent, his services were terminated with effect from 29.4.1994 without any reason without following any procedure. He, therefore, raised a dispute which was referred to the Labour Court, which passed the aforesaid award.

3. Learned counsel for the petitioner submitted that the Labour Court has committed an error in granting reinstatement and back wages to the respondent. He submitted that the respondent was appointed on ad hoc basis and therefore the Labour Court ought not to have given reinstatement.

4. Learned counsel for the respondent submitted that the Labour Court has considered all the facts and circumstances of the case and therefore this Court may not interfere with the impugned award.

5. As a result of hearing and perusal of the record, I am of the view that the Labour Court has given cogent and convincing reasons for granting reinstatement. The Labour

Court has recorded that the petitioner has not followed the provisions of the Act and not given notice or notice pay. Learned counsel for the petitioner is not able to controvert this aspect of the matter. I am in complete agreement with the reasonings adopted and findings recorded by the Labour Court in so far as reinstatement is concerned.

6. However, the Labour Court has granted back wages without giving any reasons and only as a matter of course. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

7. In the premises aforesaid, this petition is partly

allowed. The award granting back wages is quashed and set aside. The rest of the award is confirmed. The award of the Labour Court is modified to the aforesaid extent. The respondents will be reinstated on or before 1.1.2006 with continuity of service. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]